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When auditors turn editors

The IRS and the nonprofit press

by ANGUS MACKENZIE

For many publications, qualifying as tax exempt under Internal Revenue Code 501 (c) (3) is a matter of life or death. Those that qualify are eligible to receive contributions which donors can write off as deductions. Another boon for those who pass the IRS test is lower postage rates. Mark Dowie, who served as publisher of *Mother Jones* until August 1980, estimates that in recent years its exempt status saved the muckraking magazine roughly \$200,000 annually on postal solicitations alone.

Now *Mother Jones* is one of a group of nonprofit publications, of varying political persuasions, that have reason to fear that the IRS will put them out of business, or at least make it very hard for them to survive, by withdrawing their tax-exempt status. Meanwhile, both the language of the tax laws and the close scrutiny accorded some of these publications by revenue agents have, in effect, already abridged freedom of the press in this country: there are limits to what a nonprofit periodical can say; there are proscribed ways of dealing with subject matter. Auditors have become editors.

Mother Jones's troubles with the IRS started last year — five years after its parent, the Foundation for National Progress, was granted tax-exempt status as a nonprofit charitable and educational entity. On March 27, 1980, then-publisher Dowie received a phone call from IRS agent Lee Junio. Junio said she was starting a "routine" audit of the foundation, including its magazine, and would like to visit its offices on Third Street in San Francisco to take a closer look at how it operated.

Junio turned up on April 17 and for a week settled into the magazine's editorial conference room. Her field audit examined the year 1978. She wanted everything: editorial and financial records; contracts between the magazine and its writers; information about the qualifications of its writers; and every 1978 issue of *Mother Jones*, as well as all the publications put out that year by the foundation's six other projects. (The six are: The New School for Democratic Management, The Energy Project, The Solar Energy Project, The Rent Control Project, The Mental Health Project,

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and The TV Project.) After she had selected and photocopied key documents, Junio returned to her office in the San Francisco Federal Building, where she continued her analysis.

In the summer of 1980, Dowie stepped down as publisher and was replaced by Jacques Marchand. Marchand asked the foundation's tax attorney, Thomas Silk, to handle the legal response to any questions Junio's audit might raise. Silk, who had formerly worked with the Tax Division of the Department of Justice, subsequently met with Junio who did, indeed, raise several questions. The prickliest was: How is *Mother Jones* distinguishable from a commercial publication? Since, according to IRS Revenue Ruling 67-4, a nonprofit publishing venture must be distinguishable in a variety of ways from a commercial one, the question posed the threat that *Mother Jones* would be taxable. "It was the first indication," Silk recalls, "that there might be some doubt as to the favorable resolution of the audit."

In a detailed memorandum — Junio had asked for a reply in writing — Silk spelled out the differences between *Mother Jones* and commercial publications: the magazine did not want to make a profit, and it had never made a profit; its economic survival, he wrote, "is possible only because of charitable contributions and low-interest loans made by its supporters." Moreover, the foundation's charitable and educational principles brought *Mother Jones* into "frequent conflict with big business," thus drying up a potential source of ad revenue: corporate advertising. Automobile manufacturers also shunned the magazine, Silk pointed out, as a result of its articles on the Ford Pinto.

During the audit, *Mother Jones* happened to be preparing for publication — in its February/March issue — just the sort of piece that revenue agents might be expected to study with special care. Publishing articles that attempt to influence legislation may be grounds for challenging an organization's tax-exempt status. "The Trenchcoats Retrench," by Jeff Stein, dealt with the Intelligence Identities Protection Act, which would jail reporters and publishers for exposing the identities of intelligence agents. "If Stein had submitted a piece opposing that legislation," comments Marchand, "we couldn't have run it. We cannot say it ought to be opposed. We've got to be very cautious."